

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL
SOFTWARE ANTITRUST LITIGATION
(NO. II)**

**Case No. 3:23-CV-3071
MDL No. 3071**

This document relates to: 3:23-cv-00979

District Judge Waverly D. Crenshaw

**ANSWER TO SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT
BY DEFENDANT FIRST COMMUNITIES MANAGEMENT, INC.**

First Communities Management, Inc. ("FCM"), by and through counsel, submits this Answer to the second amended consolidated class action complaint (ECF No. 530) and asserts its affirmative defenses as follows.

GENERAL DENIAL

The preamble to the Complaint asserts legal conclusions and Plaintiffs' description of their claims and allegations to which no response is required. To the extent the introductory paragraph contains factual allegations, FCM denies those allegations.

FCM makes no admission as to the accuracy or validity of the Plaintiffs' headings, and, where the FCM repeats those headings, it is only for the convenience of the Court and not an admission of any allegation in the Complaint. Except as specifically admitted, FCM denies the allegations in the Complaint. Unless otherwise noted, all references to a specified paragraph refer to the numbered paragraphs in the Complaint. Moreover, any factual averment that is admitted below is admitted only as to FCM and only as to the specific facts stated therein and not as to any conclusions, legal or otherwise, characterizations, implications, or speculation in the averment or the Complaint as a whole.

With respect to the allegations in specific paragraphs of the Complaint, FCM by and through its undersigned attorneys, respond as follows.

SPECIFIC RESPONSES

I. INTRODUCTION

1. Denied.

2. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM admits that RealPage is a developer of certain software for the management of multifamily real estate. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

3. FCM is not an “Owner Defendant” and therefore lacks knowledge or information sufficient to form a belief about allegations regarding Owner Defendants. FCM admits that it operates strictly in the role of a property manager. FCM denies the remainder of the allegations in this paragraph.

4. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

5. FCM is not an “Owner Defendant” and therefore lacks knowledge or information sufficient to form a belief about allegations regarding Owner Defendants. FCM denies the remainder of the allegations in this paragraph.

6. Denied.

7. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

8. Denied.

II. BACKGROUND

9. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the remainder of the allegations in this paragraph.

10. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

11. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the remainder of the allegations in this paragraph.

12. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM lacks knowledge as to any “witness interviews” and therefore lacks knowledge or information sufficient to form a belief about such allegations. FCM denies the remainder of the allegations in this paragraph.

13. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding only Realpage. FCM denies the remainder of the allegations in this paragraph.

14. FCM admits that RealPage charges certain fees for the use of its revenue management solutions. FCM denies the remainder of the allegations in this paragraph.

15. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the remainder of the allegations in this paragraph.

16. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the remainder of the allegations in this paragraph.

17. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies that it has been assigned a pricing advisor or revenue manager “to monitor the client’s compliance with RMS pricing, and to disseminate confidential and commercially sensitive information provided to RealPage by the client’s competitors to encourage RMS price compliance.”

18. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

19. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

20. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

21. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

22. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

23. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

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31. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

32. FCM lacks knowledge or information sufficient to form a belief as to the truth of the alleged practices of unidentified “residential property owners and managers” at an unspecified period in time, and therefore denies the allegations in this paragraph.

33. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

34. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants or Plaintiffs’ charts. FCM denies the allegations in this paragraph to the extent they relate to FCM.

35. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM. .

36. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

37. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph. FCM

specifically denies that it “coordinates prices” with any Defendant or other owner or operator of residential real estate.

38. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

39. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

40. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

41. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

42. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

43. Denied.

III. JURISDICTION AND VENUE

44. FCM admits Plaintiffs bring this case styled as alleged in this paragraph. FCM denies all allegations of antitrust or anticompetitive conduct or that Plaintiffs are entitled to any damages or relief. FCM denies that the Complaint identifies a cognizable “Class.”

45. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required. To the extent a response is deemed required, FCM is not contesting subject matter jurisdiction at this time.

46. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required. To the extent a response is deemed required, FCM is not contesting venue at this time.

47. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required. To the extent an answer is required, FCM admits that it managed property in certain states, but otherwise denies the allegations in this paragraph. FCM denies that it engaged in an antitrust conspiracy. To the extent the allegations in this paragraph relate to other Defendants and/or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations.

48. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required.

49. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required. To the extent a response is deemed required, FCM is not contesting forum.

IV. THE PARTIES

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116. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

117. FCM admits that the number of units listed in this paragraph is approximately accurate. FCM admits it operates in at least the following regional submarkets as alleged by Plaintiffs: Atlanta, Austin, Birmingham, Charlotte, Dallas-Fort Worth, Houston, Jacksonville, Kansas City, Louisville, Nashville, Orlando, Raleigh, San Antonio, Tampa, Washington, and Wilmington.

118. FCM admits that it entered into a written contract for and used at least one RealPage's RMS—YieldStar—in connection with its management of some of its multifamily rental units throughout the United States. FCM denies that it “paid for” RMS as the tool is paid for by property owners. FCM denies the remainder of the allegations in this paragraph.

119. Denied.

120. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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180. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

181. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

182. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

183. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

184. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

185. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

186. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

187. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

188. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

189. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

190. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

191. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph

192. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

193. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

194. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

195. Denied.

196. Denied.

197. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. Plaintiffs have listed FCM as a “Managing Defendant.” FCM admits that it manages properties and does not own real estate. FCM admits that it has no ownership interest in the buildings it manages. FCM denies that it acts

as an “agent” for any other defendant or any alleged co-conspirator. FCM denies all allegations of conspiracy.

198. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM is not alleged to be an “Owner-Operator”.

199. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM is not alleged to be an “Owner.”

200. Denied.

201. FCM is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph, except admits that Plaintiffs informed certain Defendants’ counsel that they had dismissed certain Defendants that did not subscribe to or use any RealPage RMS.

V. FACTUAL ALLEGATIONS

202. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

203. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

204. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

205. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

206. FCM denies all allegations of a conspiracy. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

207. FCM denies all allegations of a conspiracy. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

208. FCM denies all allegations of a conspiracy. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

209. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

210. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

211. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

212. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

213. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

214. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

215. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

216. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

217. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

218. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

219. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

220. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

221. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

222. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

223. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

224. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

225. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

226. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

227. FCM denies the allegations in this paragraph, except admits that FCM provides RealPage with certain data. FCM is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph regarding other Defendants.

228. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

229. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

230. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

231. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

232. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

233. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

234. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

235. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

236. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

237. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

238. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

239. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

240. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

241. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

242. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

243. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

244. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

245. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations of this paragraph as they relate to FCM.

246. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

247. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

248. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

249. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

250. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

251. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

252. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

253. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants. FCM denies the allegations in this paragraph to the extent they relate to FCM.

254. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

255. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

256. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

257. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

258. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

259. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

260. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

261. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

262. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

263. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

264. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

265. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

266. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

267. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

268. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

269. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

270. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants and denies the allegations to the extent they relate to FCM.

271. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it relates to other Defendants and denies the allegations to the extent they relate to FCM.

272. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

273. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

274. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

275. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

276. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

277. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

278. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

279. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

280. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

281. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

282. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

283. FCM lacks knowledge regarding the statements or opinions of undisclosed confidential witnesses. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

284. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

285. FCM lacks knowledge regarding the statements or opinions of undisclosed confidential witnesses. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of

these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

286. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

287. The allegations in this paragraph consist of legal contentions or conclusions to which no response is required. To the extent an answer is required, FCM lacks knowledge regarding how other Defendants are organized or how they operate. And to the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph. FCM denies that it participated in any supposed “cartel.”

288. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

289. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

290. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

291. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

292. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

293. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

294. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

295. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

296. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

297. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

298. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

299. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

300. FCM lacks knowledge regarding how other Defendants are organized or how they operate. To the extent the allegations in this paragraph relate to other Defendants or third parties, FCM lacks knowledge or information sufficient to form a belief as to the truth of these allegations and, on that basis, denies all such allegations. As there are no allegations specific to FCM in this paragraph, FCM otherwise denies the allegations in this paragraph.

301. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

302. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

303. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

304. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

305. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

306. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

307. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

308. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

309. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

310. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

311. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

312. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

313. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

314. FCM admits it is or has been a member of TAA. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

315. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

316. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

317. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

318. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

319. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

320. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

321. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

322. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

323. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

324. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM denies the allegations in this paragraph.

325. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

326. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

327. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

328. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

329. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

330. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

331. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

332. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

333. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

334. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph or the figure.

335. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph or the figure.

336. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

337. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

338. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

339. FCM admits it operates in the Nashville area. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

340. FCM admits it operates in the Atlanta area. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

341. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

342. FCM admits it operates in the Dallas area. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

343. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

344. FCM admits it operates in the D.C. area. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

345. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

346. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

347. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

348. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

349. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

350. FCM denies the allegations in this paragraph.

351. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

352. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

353. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

354. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

355. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. To the extent the allegations in this paragraph are made against FCM, FCM denies the allegations in this paragraph.

356. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. To the extent the allegations in this paragraph are made against FCM, FCM denies the allegations in this paragraph.

357. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. To the extent the allegations in this paragraph are made against FCM, FCM denies the allegations in this paragraph.

358. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. To the extent the allegations in this paragraph are made against FCM, FCM denies the allegations in this paragraph.

359. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. To the extent the allegations in this paragraph are made against FCM, FCM denies the allegations in this paragraph.

360. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

361. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

362. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

363. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

364. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

365. Denied.

366. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

367. Denied.

368. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

369. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

370. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

371. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

372. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

373. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

374. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

375. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

376. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

377. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

378. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

379. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

380. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

381. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

382. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

383. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

384. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

385. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

386. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM admits it has attended at least one NMHC event. FCM denies that such mere attendance indicates Plaintiff's allegations of conspiracy or cartel. FCM denies the remainder of the allegations in this paragraph as it relates to FCM.

387. FCM admits it is or has been a member of TAA. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

388. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of collusion and conspiracy.

389. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

390. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

391. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

VI. RELEVANT MARKET

392. Denied.

393. Denied.

394. Denied.

395. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it is not a consumer.

396. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it is not a consumer.

397. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph as it is not a consumer.

398. FCM admits this paragraph purports to define the SSNIP test. To the extent further response is required, FCM denies the allegations in this paragraph.

399. Denied.

400. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

401. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

402. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

403. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

404. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM denies the allegations in this paragraph as it relates to FCM.

405. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

406. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph regarding other Defendants. FCM admits it operates in more than one “region” as identified by Plaintiffs. FCM denies the remainder of the allegations in this paragraph.

407. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

408. Denied.

409. Denied.

410. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

411. This paragraph is not directed to FCM, so no response is required. To the extent a response is required, FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

412. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

413. FCM admits it operates within the alleged Nashville submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

414. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

415. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

416. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

417. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

418. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of co-conspiracy.

419. FCM admits it operates within the alleged Atlanta submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

420. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

421. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

422. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

423. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

424. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

425. FCM admits it operates within the alleged Austin submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

426. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

427. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

428. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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430. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

431. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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444. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

445. FCM admits it operates within the alleged Charlotte Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

446. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

447. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

448. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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475. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

476. FCM admits it operates within the alleged Houston Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

477. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

478. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

479. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

480. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

481. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

482. FCM admits it operates within the alleged Jacksonville Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

483. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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531. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

532. FCM admits it operates within the alleged Orlando Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

533. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

534. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

535. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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595. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

596. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

597. FCM admits that it operates within the alleged Tampa Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

598. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

599. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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614. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

615. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy.

616. FCM admits it operates within the alleged Wilmington Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

617. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

618. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

619. Denied.

620. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

621. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

622. FCM admits it operates within the alleged Birmingham Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of allegations in this paragraph.

623. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

624. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph. FCM denies all allegations of a conspiracy or cartel.

625. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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665. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

666. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

667. FCM admits it operates within the allege San Antonio Submarket. FCM lacks knowledge or information sufficient to form a belief about the remainder of the allegations in this paragraph.

668. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

669. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

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676. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

677. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

678. Denied.

679. Denied.

680. Denied.

VII. CLASS ACTION ALLEGATIONS

681. FCM admits that Plaintiffs purport to bring this putative class action on behalf of the class described in this paragraph, but denies that any class may be certified in this action,

denies that Plaintiffs are entitled to any relief, and denies the remaining allegations of this paragraph.

682. FCM admits that Plaintiffs purport to exclude certain persons and entities from the putative class on whose behalf Plaintiffs purport to bring this action, but denies that any class may be certified in this action, denies that Plaintiffs are entitled to any relief, and denies the remaining allegations of this paragraph.

683. Denied.

684. Denied.

685. Denied.

686. Denied.

687. Denied.

688. Denied.

689. Denied.

VIII. ANTITRUST INJURY

690. FCM lacks knowledge or information sufficient to form a belief about the allegations in this paragraph.

691. Denied.

692. Denied.

693. Denied.

IX. CONTINUING VIOLATION

694. Denied.

695. Denied.

696. Denied.

697. Denied.

698. Denied.

699. Denied.

700. Denied.

X. CLAIMS FOR RELIEF

Count I

701. FCM admits Plaintiffs intend to incorporate by reference their allegations in the preceding numbered paragraphs and correspondingly incorporates its own answers to each such preceding Paragraph.

702. Denied.

703. Denied.

704. Denied.

705. Denied.

706. Denied.

707. Denied.

Count II

708. FCM admits Plaintiffs intend to incorporate by reference their allegations in the preceding numbered paragraphs and correspondingly incorporates its own answers to each such preceding Paragraph.

709. Denied.

710. Denied.

711. Denied.

712. Denied.

713. FCM admits that Plaintiffs seek certain damages, but denies that Plaintiffs are entitled to any damages or other relief whatsoever.

714. Denied.

715. Denied.

716. Denied.

717. Denied.

718. Denied.

719. Denied.

720. Denied.

721. Denied.

722. Denied.

723. Denied.

724. Denied.

725. Denied.

726. Denied.

727. Denied.

728. Denied.

729. Denied.

730. Denied.

731. Denied.

732. Denied.

733. Denied.

734. Denied.

735. Denied.
736. Denied.
737. Denied.
738. Denied.
739. Denied.
740. Denied.
741. Denied.
742. Denied.
743. Denied.
744. Denied.
745. Denied.
746. Denied.
747. Denied.
748. Denied.
749. Denied.
750. Denied.
751. Denied.
752. Denied.
753. Denied.
754. Denied.
755. Denied.
756. Denied.
757. Denied.

XI. PRAYER FOR RELIEF

FCM denies any and all allegations contained in Plaintiffs' prayer for relief in Paragraphs A through E, denies that Plaintiffs are entitled to any relief whatsoever, and requests that Plaintiffs take nothing in this suit and that this matter be dismissed with prejudice, with costs and fees awarded to FCM.

PLAINTIFFS' JURY DEMAND

FCM admits Plaintiffs have sought a jury trial in this action. FCM denies Plaintiffs' right to a jury to the extent they and/or unnamed class members signed jury waivers, agreements to arbitrate, or to waive a class action with FCM or any other Defendant.

FCM'S AFFIRMATIVE DEFENSES

FCM sets forth below its affirmative defenses. Each defense is asserted as to all claims against FCM. By setting forth these affirmative defenses, FCM does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the Plaintiffs' allegations. As separate and distinct affirmative defenses, FCM alleges as follows:

To the extent necessary, FCM alleges Plaintiffs' claims are barred because the acts Plaintiffs allege FCM undertook in furtherance of the alleged conspiracy were in FCM's unilateral business interest. FCM reserves the right to assert additional avoidances and defenses as they become known during discovery and based on the record as it develops, up to and including the time of trial.

FIRST DEFENSE

(Failure To State A Claim)

1. Plaintiffs' claims are barred in whole or in part because Plaintiffs' Second Amended Consolidated Class Action Complaint fails to state facts upon which relief can be granted.

SECOND DEFENSE

(Statute of Limitations)

2. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

3. To the extent Plaintiffs seek to bring claims outside the applicable statute of limitations, Plaintiffs' Complaint is time-barred.

4. To the extent that Plaintiffs' Complaint relies on information made public more than four years ago, Plaintiff's Complaint is time-barred.

THIRD DEFENSE

(No injury)

5. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not suffered any injury in fact or any injury cognizable under the antitrust laws.

6. Plaintiffs' alleged harm lies in their speculation that many companies colluded seamlessly through a conspiracy, resulting in their harm. In essence, Plaintiffs complain about the impact of naturally unpredictable changes in the market conditions that exist in the global, national, and local economy.

7. To the extent that Plaintiffs maintain that they were injured by these events, such an injury is not cognizable under the antitrust laws.

FOURTH DEFENSE

(Failure To Mitigate)

8. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to exercise reasonable care to mitigate any damages they may have suffered.

9. To the extent Plaintiffs believed that FCM agreed to use RealPage Revenue Management software and that such agreement had the effect of raising rental prices above competitive levels, Plaintiffs had an obligation to mitigate their damages by seeking other sources of supply, including from other property managers or owners. Plaintiffs' failure to exercise reasonable care to mitigate damages was the complete or partial cause of any damages Plaintiffs may have suffered.

FIFTH DEFENSE

(Lack of Proximate Cause & Intervening/Superseding Conduct)

10. Plaintiffs' claims are barred, in whole or in part, because any alleged injuries and damages either were not legally or proximately caused by any acts or omissions of FCM or were caused, if at all, solely and proximately by Plaintiffs' conduct or by the conduct of third parties including, without limitation, the prior, intervening, or superseding conduct of Plaintiffs or such third parties.

SIXTH DEFENSE

(Waiver)

11. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

12. Plaintiffs' continued rental leases at what they now allege are prices above the competitive level manifest an intention to waive any right to bring this suit and are inconsistent with any other intention.

13. Plaintiffs, by their actions, accepted the benefits of an ongoing relationship with Defendants and relinquished their rights to bring suit.

SEVENTH DEFENSE

(Laches)

14. Plaintiffs' claims are barred by the equitable doctrine of laches.

15. Plaintiffs demonstrated an unreasonable lack of diligence in bringing their claims.

16. Plaintiffs' unreasonable lack of diligence in bringing their claims now bars them.

EIGHTH DEFENSE

(Consent)

17. Plaintiffs' claims are barred, in whole or in part, due to their ratification of, and consent to, the conduct of FCM.

18. Plaintiffs' Complaint demonstrates its long-standing ratification of and consent to the complained-of conduct.

19. Accordingly, because Plaintiffs have been aware for years of the very same conduct they now challenge—and because some of that conduct provided Plaintiffs a direct benefit—Plaintiffs' claims are barred by the doctrine of ratification.

NINTH DEFENSE

(Arbitration Agreements, Class Action Waivers, or Other Contractual Terms)

20. Plaintiffs' claims are barred, in whole or in part, to the extent the rental lease agreements pursuant to which Plaintiffs' rented their apartments contain arbitration clauses, clauses providing a different forum for the resolution of their claims, or provisions waiving a Plaintiff's ability to bring a representative or class action claim.

TENTH DEFENSE

(Right to Set Off Amounts Paid)

21. Without admitting the existence of any contract, combination, or conspiracy in restraint of trade, and expressly denying same, Plaintiffs' claims are barred, in whole or in part, by non-settling Defendants' right to set off any amounts paid to Plaintiffs by any Defendants who have settled, or do settle, Plaintiffs' claims against them in this action.

ELEVENTH DEFENSE

(Contracts Without Any Purported Overcharge)

22. Without admitting the existence of any contract, combination, or conspiracy in restraint of trade, and expressly denying same, Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs entered into contracts that do not include any purported overcharge.

TWELFTH DEFENSE

(Improper Damages)

23. Plaintiffs' claims are barred, in whole or in part, to the extent they seek improper multiple damage awards, and damage awards duplicative of those sought in other actions, in violation of the Due Process guarantees of the Fifth and Fourteenth Amendments of the United States Constitution and of the Eighth Amendment of the United States Constitution.

THIRTEENTH DEFENSE

(Acquiescence)

24. Plaintiffs' claims are barred, in whole or in part, by the Plaintiffs' knowing acquiescence to the restraints of trade alleged in the Complaint.

FOURTEENTH DEFENSE

(Damages Reduced by Plaintiffs' Conduct)

25. Upon information and belief, Plaintiffs' claims are barred, in whole or in part, by Defendants' right to set off any amount paid to Plaintiffs by damages attributable to Plaintiffs' conduct to the extent Plaintiffs unlawfully shared information found to be competitively sensitive regarding their rental lease agreements or potential alternative rental lease agreements.

FIFTEENTH DEFENSE

(Lack of Jurisdiction)

26. Some or all of Plaintiffs' state-law claims cannot be brought against FCM for a lack of jurisdiction. For instance, the laws of the states cited in Count II of the Complaint are not intended to, and do not, apply to conduct occurring outside of those states, and Plaintiffs' Complaint does not include any Plaintiff from the States of Alaska, Arizona, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

27. Many of the state laws allegedly giving rise to Plaintiffs' claims do not apply because the alleged conduct did not occur within or substantially affect the citizens or commerce of the respective states, or because FCM had no specific intent to impact the commerce of those states. As a result, the application of those state laws to FCM's conduct would violate the Due Process Clauses and Commerce Clause of the U.S. Constitution, the principle of federalism, and the constitutions and laws of the respective states at issue.

28. To the extent that the Complaint seeks to assert claims or obtain relief on behalf of multifamily renters located outside of the jurisdictions governed by those laws, those claims are barred as improper assertions of extraterritorial jurisdiction and any effort to enforce those laws as to residents of other states would violate the Due Process Clause and the Commerce Clause of the U.S. Constitution and various state laws and constitutions.

SIXTEENTH DEFENSE

(No Private Right of Action)

29. Some of Plaintiffs' state-law claims are barred, in whole or in part, to the extent Plaintiffs seek damages under state laws that do not permit recovery of damages by private plaintiffs.

SEVENTEENTH DEFENSE

(Failure to Comply with State Law Notice)

30. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs failed to comply with the notice requirements under various state laws.

EIGHTEENTH DEFENSE

(Justified & Pro-Competitive Conduct)

31. Some or all of Plaintiffs' claims, including, without limitation, certain state-law claims, are barred because all of FCM's conduct challenged by Plaintiffs was lawful, fair, non-deceptive, expressly authorized by law, justified, and pro-competitive; it constituted a bona fide business practice consistent with industry practices and was carried out in furtherance of legitimate business interests; and it was an essential part of FCM's lawful business operations.

NINETEENTH DEFENSE

(State Law Class Action Limitations)

32. Some or all of the respective state-law claims at issue cannot be, and were not intended to be, applied in the class-action context.

TWENTIETH DEFENSE

(Standing)

33. Plaintiffs' claims and the claims of any putative class members are barred, in whole or in part, because Plaintiffs and any putative class members lack antitrust standing and have not suffered any injury in fact and/or any injury cognizable under the antitrust laws, to the extent that their losses were contingent upon their rent being paid in full or in part by others such as employers, family members, co-tenants, and government benefits.

TWENTY-FIRST DEFENSE

(Adequate Remedy is Available)

34. Plaintiffs' requests for injunctive, equitable, and/or declaratory relief (on behalf of themselves and the purported class) are barred because an adequate remedy is available at law.

TWENTY-SECOND DEFENSE

(Unmanageable Class Action)

35. This action is not properly maintainable as a class action under the Federal Rules of Civil Procedure. Among other things, common issues of fact and law do not predominate over individual issues; a class action is not a superior method for adjudicating the purported claims set forth in the Complaint; adjudication on a class basis would be unmanageable; the interests of the purported class members are in conflict with each other; Plaintiffs are not proper class

representatives and their claims are not sufficiently typical of the purported class; and Plaintiffs and/or their counsel will not fairly and adequately represent the purported class.

TWENTY-THIRD DEFENSE

(Incorporating Other Defendants' Defenses)

36. FCM adopts and incorporates by reference any and all other defenses asserted by any other Defendant to the extent that the defense would apply to FCM.

TWENTY-FOURTH DEFENSE

(Right to Assert Other Defenses)

37. FCM reserves the right to assert other defenses as this action proceeds up to and including the time of trial.

Dated: February 5, 2024

/s/ Richard P. Sybert
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Counsel for Defendant Rose Associates Inc.

CERTIFICATE OF SERVICE

Pursuant to paragraph 9 of the Court's Practice and Procedures Noticed entered April 19, 2023 (ECF No. 2), I certify that counsel of record who are registered for CM/ECF filing will be served electronically with this filing on February 5, 2024.

/s/ Richard P. Sybert
Richard P. Sybert